Supreme Court, U.S.
FILED
FEB 09 2000
CLERK

No. 99-1001

IN THE

Supreme Court of the United States

KATINA ESTELLE DART,

Petitioner,

v.

ROBERT CHARLES DART,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE MICHIGAN SUPREME COURT

RESPONDENT'S BRIEF IN OPPOSITION

HANLEY M. GURWIN
Counsel of Record
AMY A. STAWSKI
CHARLES G. GOEDERT
DICKINSON WRIGHT PLLC
Attorneys for Respondent
525 North Woodward Avenue
Suite 2000
Bloomfield Hills, MI 48304
(248) 433-7200

157780

Counsel Press LLC
(800) 274-3321 • (800) 359-6859

37 pp

COUNTER-STATEMENT OF QUESTION PRESENTED

Should certiorari be granted even though the Michigan Supreme Court and Court of Appeals correctly recognized the UK Judgment of Divorce based upon the principles of comity, *res judicata* and the Uniform Foreign Money-Judgments Recognition Act?

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INTRODUCTION

Petitioner's Petition for Writ of Certiorari ("Petition") contains many factual errors, misstatements, and unsupported allegations regarding the United Kingdom proceedings for which there is no supporting citation to the record. Pursuant to Rule 15(2), this Brief in Opposition to the Petition corrects these false references and provides a Statement of the Case that is clear, concise and fairly stated.

STATEMENT OF THE CASE

Robert Charles Dart ("Respondent") and Katina Estelle Scofes ("Petitioner") were married on October 25, 1980. The parties lived in Okemos, Michigan until August 1993. At that time, they moved to London, England with their two minor children, William and Arianna, then 10 and 7 respectively. Petitioner acknowledged that they moved to London for educational and financial reasons. (Transcript of hearing in the Michigan Court May 18, 1995 at pp. 8-11). Upon moving to London, the children were enrolled in The American School in London. (February 7, 1995 Affidavit of Robert Charles Dart ("Affidavit of RCD #1"), at p. 17). The parties purchased and moved into a residence, but after about two (2) months, Petitioner insisted upon extensive renovations. The parties then moved into nearby quarters while Petitioner supervised the ongoing remodeling. (April 12, 1995 Affidavit of Robert Charles Dart ("Affidavit of RCD #2) at p. 9, ¶12, and the transcript of May 18, 1995 at p. 9). After the move to England, Respondent's father, acting on behalf of a trust established by Respondent's grandfather in 1974 (well before the marriage at a time when Respondent was only 16 years old) distributed a large sum of money to Respondent. (Deposition transcript of William A. Dart ("W.A.D. dep") at p. 16).

On February 3, 1995, more than 17 months after the parties moved to England, purchased a home, and enrolled the children in school, Respondent filed his Complaint for Divorce in the High Court of Justice Family Division in London ("UK proceedings"). (Respondent's deposition transcript ("RCD

dep") at pp. 54–55). At that time, the parties had been married for 14 years, not 19 years as Petitioner misstates. *See* p. 3 of the Petition. Respondent filed the Complaint approximately six weeks after Petitioner admitted to him, for the first time, that the affair she previously told him had been a "one night stand" was in fact a sexual relationship with another man in Greece which had extended over a number of years. (Affidavit of RCD #2 at p. 4, ¶39 and p. 11, ¶18). Petitioner confirmed this at her deposition. (Petitioner's deposition at pp. 73-82).

Petitioner was properly served with the Complaint for Divorce the next day, February 4, 1995, while still living with Respondent and their two minor children in England. She then telephoned attorneys in Michigan who signed and filed a Complaint for Divorce in Michigan on her behalf on February 7, 1995. Petitioner did not sign the Complaint and remained in England where she retained an English solicitor to represent her. She also hired experts, Harry T. Cendrowski and Paul J. Walters, Jr., of Cendrowski, Selecky & Reinhart, P.C., to analyze the financial matters, conduct valuations of property presented in the divorce, and to testify on her behalf in the UK proceedings.[1]

Petitioner fully and voluntarily participated in all phases of the UK proceedings before Justice Johnson. Petitioner filed an Answer requesting full financial relief, conducted extensive discovery,[2] appeared with and/or through counsel at a multitude

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1. In fact, Mr. Cendrowski's report contained the representation that he and his firm were "engaged to . . . estimate the value of the marital assets." (Report of Harry T. Cendrowski and Paul J. Walters, Jr., of Cendrowski, Selecky & Reinhart, P.C. (p. 1)).

2. As to the extensive discovery in which Petitioner engaged, it is significant, in light of the allegations in her Petition, that not once was Justice Johnson asked to intervene by either party to limit or compel requested discovery. In fact, after receiving Respondent's Answers to her first wave of discovery requests and supporting documentation, Petitioner's English counsel served supplemental discovery requests and a "schedule of deficiencies" on Respondent's counsel. Petitioner's (Cont'd)

of hearings (*see infra*), and presented evidence, including documents and expert and lay witnesses. During the pendency of the UK proceedings, Petitioner unsuccessfully challenged that Court's jurisdiction of the divorce action.[3] Contrary to Petitioner's misstatement to this Court that the UK Court "flatly denied her request" to dismiss the case (Petitioner's brief, p. 5), her request was *not* summarily denied. On the contrary, Petitioner submitted affidavits, participated in a hearing, and had the opportunity to present testimony and cross-examine witnesses with respect to jurisdiction. The UK Court determined that it had proper jurisdiction. Petitioner then appealed that decision both to the English Court of Appeal and the House of Lords, which tribunals affirmed the UK Court's exercise of jurisdiction.

Initially, the children were made Wards of the Court on February 10, 1995, in Action No. W35 of 1995, a proceeding separate and distinct from the divorce case. By appearing in Action W35 of 1995, Petitioner *did not* submit to the jurisdiction of the UK Court for purposes of the divorce.[4] That proceeding

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(Cont'd)
counsel later conceded that most of the further information sought had already been supplied by Respondent. These repeated requests were one of the reasons for Justice Johnson's subsequent award of costs. *See* the UK Judgment of Divorce, p. K-13 of Petitioner's Appendix (note, however, that Exhibit K of Petitioner's Appendix mistakenly uses the dollar sign ($) instead of the British Pound sign (£) in the references to financial figures, a more than 50% discounting from the actual amounts in the text). In all, over 7,000 pages of documents (in 72 large binders) were produced during discovery in the UK proceedings. *See* p. K-13 of Petitioner's Appendix.

3. Petitioner also moved for a stay of the UK proceedings based upon *forum non conveniens*, which was denied following extensive proceedings on June 12 and June 13, 1995. ("Judgment" of June 12 and 13, 1995 ("Jurisdiction Judgment")).

4. Petitioner's dramatization of the UK proceedings in her Petition that ". . . the children's passports were seized so that they were barred from leaving England, unless [Petitioner] appeared before the English (Cont'd)

concerned only the children, over whom the UK Court had jurisdiction by virtue of their physical presence in England (Family Law Act 1986 as amended by the Children Act 1989). In that proceeding, Petitioner applied for leave to remove the children permanently from the jurisdiction and Respondent agreed that the children could move back to Michigan with Petitioner when their London school term ended in June 1995. An Order embodying their agreement was entered in Action No. W35.

Until the school term ended, however, Petitioner was not relegated to staying in England with the children.[5] Petitioner traveled extensively with them. For example, she took both children to Switzerland for a skiing holiday and to the United States during spring break. Additionally, the parties' son, William, traveled with his class to Greece.

After the UK Court determined jurisdiction was appropriate, the parties litigated the issue of the divorce. In July 1995, a "Decree Nisi of Divorce" was entered following trial of the divorce suit.[6] Petitioner sought a stay of this decree being

(Cont'd)
Court", that she was "stranded in England without any funds to provide for her or her children's needs or to return to Michigan", and that "the moment she stepped before the English Court to protect and retrieve her children, the doors to the Michigan courts slammed shut upon her" (*See* Petitioner's application, pp. 4-5) are blatant misrepresentations. Petitioner apparently wants to invoke sympathy and confusion as to her voluntary participation in the divorce and financial proceedings by giving the false impression that the proceedings concerning the children were the same proceedings as the divorce and financial matters.

5. With regard to Petitioner's claim of being "stranded" in England without money, in fact Respondent continued to pay all of her expenses, credit cards and store accounts, among other things, until May 1, 1995. At that time, he agreed to her counsel's demands to instead deposit £10,000 each month to Petitioner's account at Barclay's Bank during the pendency of the UK proceedings. He also continued to pay for health, education and travel expenses for the children.

6. In England, trial of the issues of divorce and property/financial matters is bifurcated.

made absolute which was denied. She appealed and lost, and a "Decree Absolute" granting a divorce was entered on October 27, 1995.

The trial of the parties' requests for financial relief and distribution of property commenced in England on March 11, 1996 and, after several days of testimony, concluded on March 19, 1996.[7] Petitioner was present at, and participated in, the trial with her solicitor and barristers who fully represented her interests. Petitioner gave sworn testimony and her expert testified on her behalf with respect to financial and property issues, including valuations. Petitioner's barristers exercised her right to cross examine Respondent and his witnesses.

On March 22, 1996, Justice Johnson rendered a 30-page Judgment and Order ("Judgment of Divorce") which provided, *inter alia*, distribution to Petitioner of various paintings, jewelry, and automobiles valued at well over $500,000 and a lump sum with a cash equivalent in American currency of $13,540,500. Respondent was also ordered to pay to Petitioner £5000 (about $8,000.00) each month ($96,000 annually) in child support. Additionally, Petitioner was awarded the 10,000 square foot home on 39 acres of land in Okemos, Michigan valued at $1,500,000, together with its entire contents. In arriving at his decision, Justice Johnson applied all of the factors set forth in the Matrimonial Causes Act of 1973 (similar to the factors set forth in the Michigan Supreme Court divorce case *Sparks v. Sparks*, 440 Mich. 141, 159-160; 485 N.W.2d 983 (1992)), *infra*. *See* the UK Judgment of Divorce.

Petitioner appealed the Judgment of Divorce to the English Court of Appeal, but her application was dismissed in an Opinion and Order of the Court on July 2, 1996. Petitioner's statement on page 8 of her Petition that the Court of Appeal was "the highest tribunal which reviewed the decision" is misleading. In

7. Prior to trial, Respondent's solicitor made an offer of settlement to the Petitioner's solicitor. No response from Petitioner was ever received, another fact which the UK Court considered when ordering costs. *See* for example, pp. K-43, 48-49 of Petitioner's Appendix.

fact, she also sought to appeal the English Court of Appeal's decision to The House of Lords, which request was denied on December 12, 1996. Petitioner then requested relief from the Queen's Proctor, which was denied on May 22, 1997.

Next, Petitioner filed an Application under Articles 6.1 and 14 of the European Convention of Human Rights seeking a ruling by the European Court of Human Rights that England had violated her human rights during the divorce proceedings.[8] Petitioner's Application was denied.

Meanwhile, the divorce action which Petitioner caused to be filed in the Ingham County Circuit Court in Michigan was proceeding (the "Michigan Court"). Contrary to Petitioner's assertion on p. 5 of her Petition, Respondent did not "manipulate the English Court into rendering judgment first." In fact, it was her first Michigan attorney who *stipulated* to scheduling the Michigan trial date for April 6, 1996, in a consent order entered by the Michigan Court.[9]

On May 18, 1995, the Michigan Court heard testimony in connection with Respondent's motions for summary disposition

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8. In fact, Petitioner's Application was made on a substantially similar basis as her Petition to this Honorable Court. Petitioner argued that English law as applied to her case constituted gender discrimination in violation of her civil rights and right to a fair trial warranting an award against the United Kingdom in the amount of £101,000,000 (equivalent to about $151,954,500 per the exchange rate of April 3, 1996).

9. Petitioner appeared to be in no hurry to act in the Michigan proceedings, and did not even send Respondent discovery requests until four (4) months after her attorneys filed the Michigan action. These discovery requests were served after Petitioner cited in a brief to the Michigan Court that "parallel proceedings on the same *in personam* claim should ordinarily be allowed to proceed simultaneously *at least until a Judgment is reached in one which can be pled as res judicata in the other. Laker Airways v. Sabena Belgian World Airways,* 731 F. Supp. 139 (S.D.N.Y. 1979)" (emphasis added). Petitioner's assertion that Respondent was somehow able to manipulate the UK Court to enter the Judgment of Divorce before the Michigan trial occurred is false.

based upon lack of subject matter jurisdiction and the pendency of the previously-filed UK proceedings. The Michigan Court assumed jurisdiction over the divorce and the minor children, but initially reserved its determination as to whether or not it had or should exercise jurisdiction over property matters pending briefing of the issue by the parties.[10] Both parties then filed briefs.

On August 7, 1995, the Michigan Court denied Respondent's motions and assumed concurrent jurisdiction with the UK Court over the distribution of assets. The Michigan proceeding progressed as provided by the Consent Scheduling Order until, on March 22, 1996, Respondent filed a Motion to Stay or, in the Alternative, to Dismiss the Case in the Michigan Court based upon the conclusiveness of the UK Judgment of Divorce. The motion was filed pursuant to comity, *res judicata*, and the Uniform Foreign Money-Judgments Recognition Act ("UFMJRA"), MCL 691.1151, *et seq.*; MSA 27.955(1), *et seq.*

On April 8, 1996, the Michigan Court denied Respondent's Motion to Stay or, in the Alternative, to Dismiss Case. (App. Vol. I, 82a-83a). Significantly, in denying the motion, the Michigan Court repeatedly referred to, and read from, the *wrong* transcripts of the UK proceedings and made conclusory and factually inaccurate assertions about what had occurred. That is, the Michigan Court repeatedly read from and relied on the transcripts of the hearings of June 12 and 13, 1995, regarding the issue of jurisdiction and *forum non conveniens*, and not from the UK Judgment of Divorce or property trial proceedings of March, 1996. (Transcript, April 8, 1996, App. Vol I, 24a-32a, 45a-46a).

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10. The next day, May 19, 1995, Petitioner gave an "undertaking" in the UK proceedings that she "will not further seek pronouncement of a decree of divorce in Michigan and will not take any step to apply for directions for trial in that Court," and an order was entered premised upon that undertaking. Nevertheless, Petitioner continued the Michigan proceedings.

Respondent immediately sought leave to appeal to the Michigan Court of Appeals and on April 10, 1996, the Court of Appeals granted Respondent's application and stayed the trial of the Michigan proceeding. On June 10, 1997, the Michigan Court of Appeals issued its opinion reversing the Michigan Court, holding that the UK Judgment of Divorce is final and enforceable under the UFMJRA, the principles of comity and *res judicata.* (App. Vol I, 85a-90a). *Dart v. Dart*, 224 Mich. App. 146; 568 N.W.2d 353 (1997). The Supreme Court of Michigan granted Petitioner leave to appeal and after briefing and oral argument, upheld the Court of Appeals' decision on the grounds of comity and *res judicata. Dart v. Dart*, 460 Mich. 573; 597 N.W.2d 82 (1999).

In denying Petitioner's appeals, the Michigan appellate courts found English divorce law to be very similar to the divorce law of Michigan, and held that Petitioner had not been deprived of due process. Petitioner now petitions for a Writ of Certiorari after there has been extensive and voluminous discovery, a lengthy trial on financial relief and property issues, and entry of a Judgment of Divorce in the UK proceedings, and her appeals in both countries have been unsuccessful.

REASONS FOR DENYING THE WRIT

I. THE MICHIGAN SUPREME COURT CORRECTLY RECOGNIZED THE UK JUDGMENT OF DIVORCE BASED UPON THE PRINCIPLE OF COMITY

The seminal case on the principle of comity is the 1895 case of *Hilton v. Guyot*, 159 U.S. 113; 16 S. Ct. 139; 40 L. Ed. 95 (1895). Why, then, does Petitioner fail to even mention the *Hilton* case in her Petition? After all, Petitioner cited the *Hilton* case to the Michigan Court of Appeals and Michigan Supreme Court. *See* p. 28 and p. 35 of Petitioner's Court of Appeals and Supreme Court Briefs, respectively. Perhaps Petitioner fails to cite *Hilton* because, even though the case is over 100 years old, an analysis of both the majority and dissenting opinions reveals that the *Hilton* Court has already answered Petitioner's

arguments consistent with the Michigan Supreme Court's Opinion in this case.

In *Hilton, supra*, five judgments were entered in France against two US citizens, Henry Hilton and William Libbey, doing business under the firm name of A. T. Stewart & Co. Lawsuits and counterclaims were then filed in the United States District Court, Southern District of New York. The District Court directed a verdict consistent with the French judgments. 159 U.S. at 122.

The United States Supreme Court reversed based on the lack of reciprocity in French law regarding the comity of nations.[11] 159 U.S. at 210, 229. However, before reaching that conclusion, the majority opinion undertook an exhaustive analysis of the international law of comity, and set forth the following factors which the federal courts utilize to this day in recognizing and giving full effect to the judgments of foreign countries:

> In view of all the authorities upon the subject, and of the trend of judicial opinion in this country and in England following the lead of [Justices] Kent and Story, we are satisfied that where there has been opportunity for a full and fair trial abroad before a court of competent jurisdiction, conducting the trial

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11. Significantly, immediately after deciding *Hilton, supra*, the Supreme Court then decided the case of *Ritchie v. McMullen*, 159 U.S. 235; 16 S. Ct. 171; 40 L. Ed. 133 (1895), in which a judgment of a court in Ontario, Canada was properly recognized pursuant to the rules of comity laid down in *Hilton*. The Supreme Court expressly noted that, "[b]y the law of England, prevailing in Canada, a judgment rendered by an American court under like circumstances would be allowed full and conclusive effect." 159 U.S. at 242. The Supreme Court concluded "[u]pon principle, therefore, as well as upon authority, comity requires that the judgment sued on should be held conclusive of the matter adjudged." 159 U.S. at 243. Also, note that "courts have concluded that reciprocity is no longer an element of the federal law of enforcement of foreign judgments." *Phillips USA, Inc. v. Allflex USA, Inc.*, 77 F.3d 354, 360 (10th Cir. 1996) (fn 6).

> upon regular proceedings, after due citation or voluntary appearance of the defendant, and under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries, and there is nothing to show either prejudice in the court or in the system of laws under which it was sitting, or fraud in procuring the judgment or any other special reason why the comity of this nation should not allow it full effect, *the merits of the case should not, in an action brought in this country upon the judgment, be tried afresh as on a new trial or an appeal, upon the mere assertion off the party that the judgment was erroneous in law or in fact. The defendants therefore cannot be permitted upon the general ground to contest the validity or the effect of the judgment sued on.*" 159 US at 202-203 (emphasis added).

Comity "creates a strong presumption in favor of recognizing foreign judicial decrees." *Saroop v. Garcia*, 109 F.3d 165, 169 (3rd Cir. 1997). Note that the *Hilton* criteria have largely been utilized by state courts, including Michigan, regarding application of the principle of comity to recognition of foreign judgments. *See, e.g., Bang v. Park*, 116 Mich. App. 34; 321 N.W.2d 831 (1982)[12].

In this case, Petitioner argues that the English "system of laws" is repugnant in that her due process rights were violated because: (1) she was denied discovery resulting in procedural

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12. In *Bang, supra*, the Michigan Court of Appeals defined the principle of comity as follows:

> Comity is defined as the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience and to the rights of its own citizens or of other persons who are under the protection of its laws.

unfairness; (2) there is an inherent bias in the English "system" of laws resulting from the *Preston* case and its progeny (the "trilogy"); and (3) her right to an equitable distribution of property is a cause of action being denied her. Petitioner claims, therefore, a violation of due process by Michigan's appellate courts by their recognition of the UK Judgment of Divorce. Petitioner's arguments are without merit

Petitioner's claim of procedural unfairness is strikingly similar to one of the failed arguments proffered in the *Hilton* case. In *Hilton, supra*, witnesses, including one of the plaintiffs, testified in the French action without being sworn or subjected to cross-examination. The *Hilton* Court even noted that, as a result, the defendants in France (Messrs. Hilton and Libbey) were "deprived of safeguards which are by our law considered essential to secure honesty and to detect fraud in a witness . . ." 159 U.S. at 204. Nevertheless, such shortcomings in the process were insufficient under the principle of comity to cause the Court to refuse to recognize the foreign judgments. As the *Hilton* Court stated:

> . . . But it having been shown by the plaintiffs, and hardly denied by the defendants, that the practice followed and the method of examining witnesses were according to the laws of France, we are not prepared to hold that the fact that the procedure in these respects differed from that of our own courts is of itself a sufficient ground for impeaching the foreign judgment.

159 U.S. at 205. As then Judge Cardozo observed in the case of *Loucks v. Standard Oil Co*, 224 N.Y. 99; 120 N.E. 198, 201 (N.Y. 1918), "we are not so provincial as to say that every solution of a problem is wrong because we deal with it otherwise at home."

That is exactly the situation in this case. Petitioner is pursuing her appeal because she is not satisfied with the amount of property settlement awarded by the UK Court. Petitioner is

not entitled to another trial just because she thinks she can do better before the Michigan Court.

Similarly, in *Growe v. Growe*, 2 Mich. App. 25; 138 N.W.2d 537 (1965), the plaintiff began an action for alimony in Ontario, and a judgment for alimony and custody and maintenance of the minor children was rendered by the Supreme Court of Ontario. Subsequently, the defendant left Canada, obtained a Nevada divorce and settled in Wayne County, Michigan. The plaintiff commenced suit in Wayne County Circuit Court for support arrearages. 2 Mich. App at pp. 27-28. The trial court dismissed the plaintiff's action, and the Court of Appeals, in reviewing the plaintiffs request for relief, noted:

> Faced as we are here with a judgment from a court of competent jurisdiction which lies but the breadth of a river from the instant court, closer, indeed, than most of the remaining 49 states, *and a court which draws its concepts of law from the same roots as ours, comity supplies a rational and well-founded reason for affording relief to this plaintiff.* Any appellate court faced with the compelling elements this Court finds before it would be derelict if it did not examine minutely this burgeoning concept of jurisprudence. 2 Mich. App. at p. 12 (emphasis added).

In upholding the Ontario judgment under the principle of comity, the Michigan Court of Appeals held:

> A review of the judgment will indicate whether or not the basic rudiments of due process were followed, whether the parties were present in court, whether a hearing on the merits was had.
>
> These elements were present when the case of *Helen Growe v. Joseph Louis Growe* was heard in the Supreme Court of Ontario. The requirements for proper application of comity are satisfied. 2 Mich. App. at p. 33.

In this case, the UK Judgment of Divorce at issue is based upon concepts of law that are our roots. Due process requirements indisputably were fulfilled: there was actual notice, both parties were present in court, sought relief throughout the proceedings, and presented evidence and arguments during extensive hearings on the merits.[13] Above and beyond Petitioner's due process rights, she had extensive discovery, utilized a battery of solicitors, barristers and an expert and pursued no less than three appeals (regarding jurisdiction, the divorce decree and the property distribution) in the UK proceedings. That is, Petitioner was not even denied discovery as she has alleged, and during the trial in the UK proceedings, her team of solicitors, barristers and expert witness fully utilized the voluminous discovery that had been produced. Petitioner's assertion that she was somehow restricted in conducting discovery about *whether* trust assets were part of the marital estate is similarly meritless. As Justice Johnson noted in the UK Judgment of Divorce,

> the wife's repeated questions and demand for information were aimed at challenging the husband's present wealth and *the various routes by which it came to him*; and the past expenditure of the family. *The information and documents which were provided by the husband were provided voluntarily* and the court was never asked to adjudicate on the justification for the wife's demands.

See pp. K 13-14 of Petitioner's Appendix (emphasis added). The UK Court specifically found from the evidence that almost all of Respondent's wealth was inherited rather than earned by either party. (UK Judgment of Divorce at pp. 8-9).

13. By way of contrast, in *Tal v. Tal*, 601 N.Y.S. 2d 530, 532-533; 158 Misc. 2d 703 (N.Y. App. 1993), the court could not extend comity to the husband's Israeli divorce decree because the wife had not lived in Israel at the time the husband filed for divorce, she was never given notice of the divorce action, she never appeared in that action and the terms of a separation agreement between the parties had not been incorporated within the foreign divorce decree.

It cannot be credibly argued that there was not a full and fair trial before a court of competent jurisdiction conducted upon regular proceedings with the voluntary appearance of Petitioner. The divorce trial in the UK proceedings was under a system of jurisprudence likely to secure an impartial administration of justice and, as set forth above, there is nothing to show procedural unfairness in the system of laws under which the UK Court was sitting.

With respect to Petitioner's argument that there is an inherent bias in the English system of laws which is repugnant to the gender equality recognized in Michigan jurisprudence, it is noteworthy that the *Hilton* Court relied very heavily on English law in arriving at the factors applicable to the principle of comity here in the United States. For example, *see* 159 U.S. at pp. 163-180 in which the *Hilton* Court painstakingly analyzed the law of comity in England during the colonial and early post-colonial period. As the *Hilton* Court stated: "[t]he English cases above referred to have been stated with the more particularity and detail, because they directly bear upon the question, What was the English law, being then our own law, before the Declaration of Independence?" 159 U.S. at 180. The *Hilton* Court then analyzed "the modern decisions in England", and relied upon English law regarding the principle of comity as it evolved over the centuries. *See* 159 U.S. at 193-196, 201-204, 206-210, 212-214 (quotation from page 195). Petitioner seems to forget that the English "system of laws" **IS** our "system of laws."

Instead, Petitioner argues that a "trilogy" of fairly recent English decisions in "big money" divorce cases is the "system" of laws that is repugnant to our laws[14]. Therefore, argues Petitioner, a violation of her due process rights occurred when Michigan's appellate courts recognized the UK Judgment of Divorce under the principle of comity. See pp. 14-24 of the Petition.

14. The "trilogy" is *Preston v. Preston*, 1981 2 FLR 331, *Duxbury v. Duxbury*, 1987 1 FLR 7, and *Thyssen-Bornemisza v. Thyssen Bornemisza*, 1985 1 FLR 1069.

First, a few judicial opinions is not a "system of laws". Second, even if a judicial decision is flawed, that does not defeat comity or result in a violation of due process. Thus, in *Hilton, supra,* despite the objection to a connection between the French company and the French court (159 U.S. at 116-117), the Supreme Court made no further reference to this potential judicial bias, and certainly did not find it relevant to whether the foreign judgments should be recognized. Moreover, as a matter of law, Petitioner does not have a claim for a violation of due process cognizable in this Court based upon her argument that the English "trilogy" of cases is incorrect, or that the Michigan appellate courts' decisions in recognizing the UK Judgment of Divorce were wrongly decided. *See* for example, *Neal v. Gramley*, 99 F.3d 841 (1996), in which the Seventh Circuit Court of Appeals noted, "that the commission of errors of state law in a state judicial proceeding does not deny the party harmed by those errors due process of law." 99 F.3d at 846, citing *Estelle v. McGuire*, 502 U.S. 62, 67-68; 112 S. Ct. 475, 479-80; 116 L. Ed. 2d 385 (1991). *Also, see Crooks v. Maynard*, 718 F. Supp. 1460, 1466 (D. ID. 1989), in which the United States District Court for the District of Idaho held that, "[a]n incorrect decision by a state judge is not a denial of due process, so long as the process by which the decision is made is consistent with due process." Petitioner has not argued that the process in Michigan's appellate courts by which their decisions were made has been inconsistent with due process.

Third, in her Application for Leave to Appeal to the Michigan Supreme Court, Petitioner conceded that the property distribution factors to be considered by the Michigan courts pursuant to *Sparks, supra*, and the English courts pursuant to the statutory system of divorce laws in the Matrimonial Causes Act ("MCA"), "appears similar." See p. 21 of her Application for Leave to Appeal.[15] In *Sparks,* the Michigan Supreme Court

15. Petitioner's solicitor in the UK proceedings similarly acknowledged that the *Sparks* factors "correspond very closely to our Section 25" of the MCA. (Transcript of the June 12, 1995 proceedings at p. 35).

noted that "the trial court is given broad discretion in fashioning its rulings and there can be no strict mathematical formulations." 440 Mich. at pp. 158-159. The *Sparks* Court then held:

> We hold that the following factors are to be considered wherever they are relevant to the circumstances of the particular case: (1) duration of the marriage, (2) contributions of the parties to the marital estate, (3) age of the parties, (4) health of the parties, (5) life status of the parties, (6) necessities and circumstances of the parties, (7) earning abilities of the parties, (8) past relations and conduct of the parties, and (9) general principles of equity. *Perrin v. Perrin*, 169 Mich. App. 18, 22, 425 N.W.2d 494 (1988). There may even be additional factors that are relevant to a particular case. For example, the court may choose to consider the interruption of the personal career or education of either party. The determination of relevant factors will vary depending on the facts and circumstances of the case. 440 Mich. at pp. 159-160.

Likewise, Section 25 of the MCA applied by English courts to financial relief, property distribution and support issues provides:

> (1) It shall be the duty of the court in deciding whether to exercise its powers under section 23, 24 or 24A above and, if so, in what manner, *to have regard to all the circumstances of the case*, first consideration being given to the welfare while a minor of any child of that family who has not attained the age of eighteen.
>
> (2) As regards the exercise of the powers of the court under section 23(1)(a), (b) or (c), 24 or 24A above in relation to a party to the marriage, the court shall in particular have regard to the following matters —

(a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire;

(b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;

(c) the standard of living enjoyed by the family before the breakdown of the marriage;

(d) the age of each party to the marriage and the duration of the marriage;

(e) any physical or mental disability of either of the parties to the marriage;

(f) the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family;

(g) the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it;

(h) in the case of proceedings for divorce or nullity of marriage, the value to each of the parties to the marriage of any benefit (for example, a pension)

> which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring. (emphasis added).

The similarities between the Michigan and English factors are apparent.[16] As the English Court of Appeal stated in this case, the MCA "introduced . . . equitable distribution . . . and equality of rights for men and women had become a reality." (App. Vol I, 274a). As the English Court of Appeal explained, the whole purpose of the MCA and its predecessors was to expand the authority of a court to *transfer and adjust property* on divorce, rather than limiting financial awards to support or alimony:

> Thus, the Matrimonial Proceedings and Property Act of 1970 was a significant landmark in the development of the court's power to make financial provision for an applicant following a decree of a divorce, judicial separation, or nullity. By adding to the existing powers a power to order the transfer or settlement of any realty or personalty *Parliament introduced a remedy of equitable distribution.* (emphasis added).

(App. Vol I, 274a).

Also, as explained by the same court, the term "reasonable requirements" in English divorce law is a term of art that encompasses all of the various factors set forth in Section 25 of the MCA, and is not limited to physical needs or room and board:

> From those passages [in *O'D* and *Preston*] it is implicit that reasonable requirements are more extensive than needs. . . . There must be an objective appraisal of what the applicant subjectively requires

16. In fact, the Michigan Court of Appeals also found the MCA and *Sparks* factors to be virtually identical. 224 Mich. App. at 152. Thus, the MCA factors (letters) mirror the *Sparks* factors (numbers) as follows: a = 7; b = 6; c = 5; d = 1, 3; e = 4; f = 2; and g = 8.

> to ensure that it is not unreasonable. *But the objective appraisal must have regard to the other criteria of the section, obviously including what is available, the standard of living to which the parties are accustomed, their age and state of health and, perhaps less obviously, the duration of the marriage, contribution and pension rights* both as affected by the marriage and as accrued or likely to accrue. Used thus the consideration of needs ceases to be paramount or determinative but an elastic consideration that does not exclude the influence of any of the others. (emphasis added).

(App. Vol I, 278a-279a).

Both the Michigan and English systems of divorce law seek fairness and equitableness in the adjustment of marital assets, focus on the same factors and considerations to achieve that goal, and rely on the exercise of sound and broad judicial discretion. The public policy expressed by Michigan's divorce statute, MCL 552.101 *et seq.*; MSA 25.131 *et seq.* as interpreted by case law, and England's MCA are virtually indistinguishable.

Moreover, Petitioner's assertion of bias on the part of Justice Johnson, alleging that his reference to Petitioner's right to indulge herself by purchasing "some particularly splendid outfit" was "insulting and demeaning" to women, appears to be intentionally misleading. This statement reflected the established *facts* about her lifestyle and the manner in which she "indulges" herself. Petitioner admitted that she was addicted to shopping and that she thought nothing of spending £3,000 to 5,000 at a time on clothing (about $4,500 to $8,000). (App. Vol II, 175a). Justice Johnson had noted that Respondent's large inheritance was not the product of this marriage, but rather the result of "the enterprise and industry of the husband's (Respondent's) father." (Judgment of Divorce at p. 9). Therefore, in providing Petitioner with a distribution over and above her reasonable needs, Justice Johnson was invading Respondent's separate

assets to accommodate the standard of living to which Petitioner had become accustomed.

Similar to Petitioner's misleading allegations, the trial judge in the Michigan Court also made inflammatory assertions that Petitioner was treated as a second-class citizen. Specifically, the Michigan Court said,

> I thought we revolted against the English and established our own system in those Constitutional Bill of Rights to protect us from the English system, such as the right to jury, the right to a fair trial, the right to not be accused, *not be pressed by stones, as they did in the 15th century.*

(App. Vol I, 28a) (emphasis added). This type of irrelevant invective reflects the Michigan trial judge's apparent bias and failure to decide this case based on the law. Petitioner's argument that she was denied due process of law because of an inherent bias in the English system of laws is without merit.

Petitioner's third argument that she was denied her right to a cause of action for an equitable distribution is based upon the incorrect assumption that the *Preston* "ceiling" and *Duxbury* "reasonable requirements" calculations were utilized by Justice Johnson in limiting the distribution of the marital estate. Petitioner's allegations that her substantive due process rights were violated because the UK Court did not equitably divide property, but rather made an award which was capped by a "ceiling", is patently false. The UK Judgment of Divorce specifically rejected the existence of a "ceiling" on property distributions under English law, referring to it as dictum, and citing contrary statements in other English cases. Justice Johnson stated in the UK Judgment of Divorce that:

> Mr. Munby submitted that by these observations [in *Preston* and *Thyssen*] the court was wrongly imposing a limit to the amount which could be awarded in a case such as this where the assets are very substantial.

> *In deciding what is fair, just and reasonable I have not felt limited by any "ceiling" or arbitrary limit to the amount which I can award to the wife in the present case; nor do I think that this was the intention of the Court of Appeal in the passages cited above.*
>
> * * *
>
> *I have to arrive at a figure which is fair, just and reasonable. I have to achieve that objective by considering each of the factors specifically mentioned in s25 [of the Matrimonial Causes Act of 1973] and all the other circumstances of the case* which seem to me properly to be weighed in the balance. In seeking to achieve justice I am not limited to the reasonable annual expenditure of the wife . . . (emphasis added).

(App. Vol II, 502a-503a)

Justice Johnson made it eminently clear that Respondent's inheritance was not marital property, and this was recognized by the English Court of Appeal, the Michigan Court of Appeals and the Michigan Supreme Court. Consequently, even if one assumes for the sake of argument that the "trilogy" of English cases constitute a repugnant "system of laws", Petitioner cannot argue that it is repugnant that she was awarded assets that greatly exceeded the entire marital estate and unquestionably invaded the separate estate of Respondent. Throughout Petitioner's appeals in both England and the United States, she has repeatedly tried to overlook this fundamental fact, and to gloss over her false assumption that she is somehow entitled to an equitable distribution of Respondent's recent inheritance. She is not. *See* MCL 552.23, MSA 25.103; MCL 552.401, MSA 25.135; and *Lee v. Lee*, 191 Mich. App. 73, 78-79; 477 N.W.2d 429 (1991). Petitioner was not denied her right to a cause of action regarding distribution of property.

Petitioner has completely failed, in law and in fact, to demonstrate that the Michigan Supreme Court should not have

recognized the UK Judgment of Divorce under the principle of comity.

II. THE MICHIGAN SUPREME COURT PROPERLY DENIED A NEW TRIAL BASED UPON *RES JUDICATA*

The Michigan appellate courts correctly ruled that the UK Judgment of Divorce represents a complete and final resolution of financial and property issues, and that the doctrine of *res judicata* bars Petitioner from relitigating those issues.

Sections 23 and 24 of the MCA expressly provide that an English court shall determine all property transfers and adjustments necessitated by the divorce. (App. 35b-41b). Both parties in this case sought the full range of "ancillary financial relief" authorized by those sections. (App. Vol II, 499a-500a). The UK Judgment of Divorce expressly states that, upon satisfaction of the Judgment:

> [E]ach party's claim against the other for periodical payments, secured provision and lump sum and property adjustment orders under Sections 23 and 24 of the Matrimonial Causes Act 1973 do stand dismissed; it being directed pursuant to Section 25A(3) that neither party may make a further application in relation to this marriage for an order under S. 23(1)(a) or (b) thereof.

(UK Judgment of Divorce, ¶ 6, App. Vol. II, 530a). Thus, the UK Judgment of Divorce plainly constituted a complete and final property adjudication, precluding further litigation over marital assets or separate property. *Res judicata* requires that it be given preclusive effect which bars relitigation.

The law in Michigan regarding the doctrine of *res judicata* is well established. In *Eaton Bd of Rd Comm'rs v. Schultz*, 205 Mich. App. 371, 375; 521 N.W.2d 847 (1994), the Michigan Court of Appeals set forth a tripartite test under which a second action is barred. Specifically, the barring occurs when (1) the first action was decided on the merits; (2) the matter contested

in the second action was or could have been resolved in the first; and (3) both actions involve the same parties or their privies. *Id.* at 375-376. When these three factors are met, "[t]he judgment of a court of concurrent jurisdiction, directly upon the point is, as a plea, a bar, or as evidence, conclusive between the same parties, upon the same matter, when directly in question in another court." *Schwartz v. City of Flint*, 187 Mich. App. 191; 466 N.W.2d 357 (1991).

"The test for determining whether two claims arise out of the same transaction and are identical for *res judicata* purposes is whether the same facts or evidence are essential to the maintenance of the two actions." *Jones v. State Farm Mutual Auto Ins Co*, 202 Mich. App. 393, 401; 509 N.W.2d 829 (1993); *Schwartz, supra,* at pp. 194-195 (citing *Mazzola v. Vineyard Homes, Inc*, 54 Mich. App. 608, 613-614; 221 N.W.2d 406 (1974)). Further, "[t]o determine the scope and extent of a judgment as *res judicata*, the first inquiry is what issues were actually presented to the court for adjudication. *The judgment itself is, to the extent of its terms, primary evidence of what was adjudicated*". *See* Mich PI & Prac 6A (2nd Ed) at p. 343 (emphasis added) (citing *Cass County Park Trustees v. Wendt*, 361 Mich. 247; 105 N.W.2d 523 (1960)); *Prawdzik v. Heidema Bros., Inc*, 352 Mich. 102; 89 N.W.2d 523 (1958); *Bacon v. Detroit*, 282 Mich. 150; 275 N.W. 800 (1937); *Siira v. Employers Mut Liability Ins Co of Wisconsin*, 87 Mich. App. 227; 274 N.W.2d 26 (1978). However, the judgment is not necessarily exclusive of other evidence of what was adjudicated if it is not apparent in the judgment. *Union Trust Co v. Marsh*, 254 Mich. 402; 236 N.W. 816 (1931).

This rule simply makes sense. Michigan's judiciary has insightfully noted that, at its very core, "the doctrine of *res judicata* is a manifestation of the recognition that interminable litigation leads to vexation, confusion, and chaos for the litigants, resulting in the inefficient use of judicial time." *Schwartz*, 187 Mich. App. at p. 194, citing *Rogers v. Colonial Federal Savings & Loan Association of Grosse Pointe Woods*,

405 Mich. 607, 615; 275 N.W.2d 499 (1979); *Sherrell v. Bugaski*, 169 Mich. App. 10, 12; 425 N.W.2d 707 (1988). Thus, judicial efficiency clearly advises that when a prior judgment is thorough and complete, the reviewing court need not expend its time in an exhaustive reexamination of the entire record to determine what was adjudicated.

In fact, in *Hilton, supra,* the dissent opined that the French judgments should have been recognized based on the belief that "the doctrine of *res judicata* . . . should be applied to foreign judgments as well, and rests on the same general ground of public policy that there should be an end of litigation." 159 U.S. at 229. Again, the English law of *res judicata* was relied upon by the dissent in rendering its opinion. 159 U.S. at 231-233.

In this case, Petitioner actually did litigate to a final judgment in the UK proceedings all financial and property issues that had been concurrently pending in the Michigan Court. Petitioner resorts to outright misrepresentations in advancing the argument that the UK Judgment of Divorce did not allocate marital property.[17] Contrary to Petitioner's misrepresentations, the transcript of the UK proceedings shows that Petitioner was allowed to submit, and did introduce, all evidence regarding assets and value that she sought to submit. She introduced, in addition to 15 ring binders of supporting documents from the 72 binders of information produced (App. Vol. II, 142a), her expert's schedule of assets and values (*Id.*, 139a); evidence of

17. For example, the Petition asserts that:

> Mr. Justice Johnson . . . applied the accepted "Big Money" protocol . . . to limit [Mrs. Dart] to an alimony payment which . . . would satisfy her "needs" . . . Mr. Justice Johnson concluded that . . . she would only be awarded a lump sum determined by reference to the "Duxbury calculation" . . . Mr. Justice Johnson did not allow Mrs. Dart's expert to testify as to the parties assets . . . These proofs [regarding assets and contribution to the marriage] were not allowed or relevant in England.

(Petition at pp. 30, 32).

the value of Dart Container Corporation (*Id.*, 140a); and the value of the trust distribution that Respondent received (*Id.*, 151a). Her expert, Mr. Cendrowski, testified on direct examination about the extent and value of assets, and his examination was not limited or curtailed by the UK Court. (*Id.*, 326a-331a). In addition, Respondent and his expert were extensively cross-examined by Petitioner's barrister regarding assets. (*See, e.g.*, App. Vol. II, 136a-143a). Further, Petitioner's counsel specifically addressed the issue of her contribution to the marriage in their questioning. (App Vol II, 173a). The UK Court repeatedly acknowledged her contribution to the marital estate as a wife and mother, and in decorating and renovating the Okemos and London homes. (*Id.*, 174a).

The test is satisfied in this case as the same factors would be considered in a Michigan case as in the UK proceedings, and the same evidence would be presented as to assets, value, contribution, needs and the like. In this regard, Justice Johnson began his ruling following the lengthy trial by quoting English law regarding the "task of the court":

> The possible permutations and combinations of fact are infinite. In every case, therefore, *it is to the basic principles set out in Section 25 itself that a court must turn, It must apply those principles and by balancing the weight to be given to each relevant factor exercise its discretion to do that which it believes to be justice between the parties before it.* When considering redistribution of capital, a court errs if it starts by looking for a fraction; first because this forms no part of the guidelines in Section 25 and, secondly, because to do so thereby fetters the very wide discretion which the court is bidden to exercise, in order to do justice between the parties.
>
> The ultimate aim is quite clear. *It is to do that which is fair, just and reasonable between the parties in rearranging the family finances, by applying the general provisions of Section 25* together with those

> specific factors which are relevant to the particular case (emphasis added).

(App. Vol II, 478a-479a).

Near the conclusion of the UK Judgment of Divorce, Justice Johnson addresses the same two quotes from *Preston* that Petitioner relies on to support her contention that the *Preston* case and its progeny effectively handcuffed Justice Johnson in his ruling. Again, Justice Johnson rejected this interpretation of *Preston*, and expressly indicated that he was not bound by any "ceiling" or arbitrary limits. (App. Vol II, 502a).

Perhaps most convincingly, Justice Johnson begins his Conclusion in the same manner as his Introduction — with a discussion of Section 25:

> *I have to arrive at a figure which is fair, just and reasonable. I have to achieve that objective by considering each of the factors specifically mentioned in Section 25* and all the other circumstances, of the case which seem to me properly to be weighed in the balance. In seeking to achieve justice *I am not limited to the reasonable annual expenditure of the wife, which Mr. Singleton described as being her "reasonable needs" or to such other matters as Mr. Singleton described as constituting her "reasonable requirements."*
>
> * * *
>
> In the present case however, emphasizing that *need is only one of the statutory criteria*, it seems to me that, as a matter of justice, this particular wife has reasonable requirements over and above those which I have accepted as being necessary for her annual routine expenditure. (Emphasis added).

(App. Vol II, 503a, 505a).

Contrary to Petitioner's unsupported assertion, it is indisputable from the UK Judgment of Divorce that Justice Johnson's ruling rested precisely upon his application of Section

25 of the MCA. Petitioner has already conceded that the same facts or evidence are essential to the maintenance of a Section 25 distribution in England and a *Sparks* distribution in Michigan. The same facts are essential to the maintenance of the two actions for *res judicata* purposes. *Jones, supra*, at p. 401; *Schwartz, supra*, at pp. 194-195; *Mazzola, supra*, at pp. 613-614.

In this case, the UK Judgment of Divorce is professional, thorough and complete. It provides a summary of the history of the case, a description of the discovery process, a review and application of Section 25 of the MCA, and a determination of the issues on the merits, including a distribution of property. Moreover, even if one *does* review the trial record in the UK proceedings, it is apparent that Justice Johnson allowed Petitioner to proffer all property and valuation evidence, and raise all issues that she wanted to raise. The Michigan Supreme Court and Court of Appeals correctly held that Petitioner's action seeking to relitigate the same property issues is barred by *res judicata*.

III. THE PETITION SHOULD ALSO BE DENIED BECAUSE THE UK JUDGMENT OF DIVORCE WAS PROPERLY RECOGNIZED PURSUANT TO THE UNIFORM FOREIGN MONEY-JUDGMENTS RECOGNITION ACT

While the Michigan Court of Appeals properly held that the UFMJRA also applied to recognize the UK Judgment of Divorce in addition to the principle of comity and *res judicata*, the Michigan Supreme Court chose not to reach the issue given the fact that the principle of comity resolved the appeal. 460 Mich. at 575, (fn1). The Michigan Supreme Court did not find that the UFMJRA is inapplicable. Therefore, the Petition can also be denied by this Honorable Court based upon the application of the UFMJRA.

The basic premise of the UFMJRA is that a foreign judgment is conclusive between the parties to avoid relitigation of a case in the same manner as the judgment of a sister state

which is entitled to full faith and credit. *See* Section 3 of the UFMJRA, MCL 691.1153; MSA 276.955(3). The term "foreign judgment" is defined in Section 1(B) as "*any judgment* of a foreign state *granting* or denying recovery of a *sum of money, including a judgment for support in matrimonial or family matters*, but not including a judgment for taxes, a fine or other penalty." *See* MCL 691.1151(b); MSA 27.955(1)(b) (emphasis added).

The UK Judgment of Divorce is a "foreign judgment" under Section 2 of the UFMJRA which is "conclusive between the parties" under Section 3, unless one of the exceptions set forth in Section 4 applies. The exceptions are: (1) if the foreign judicial system does not provide an impartial tribunal or procedures consistent with due process of law, (2) if there was no personal or subject matter jurisdiction, (3) if notice was inadequate, (4) if fraud was evident, (5) if "the cause of action in which the judgment is based is repugnant" to public policy, (6) if the proceeding conflicted with another final judgment, (7) if the proceeding was contrary to an agreement between the parties under which the dispute was to be settled otherwise than in that court, or (8) if the forum was seriously inconvenient. MCL 691.1154; MSA 27.955(4). Moreover, a lack of personal jurisdiction does not prevent recognition of a foreign judgment if the defendant was personally served, voluntarily appeared or was domiciled in that country. MCL 691.1155; MSA 27.955(5).

Clearly, the first, third, and fifth exceptions do not apply, as has previously been discussed in this Brief, *supra.* As to jurisdiction, the UK Judgment of Divorce sets out the facts supporting personal jurisdiction, including Petitioner's active participation and her request for financial relief from the UK Court. *See* pp. 2, 21-23 of the Judgment of Divorce. Moreover, Petitioner admitted to the Michigan Court that she was living in London when the complaint was filed in the UK proceedings. Michigan Court transcript of May 18, 1995, at pp. 9-11. Additionally, Petitioner was personally served and voluntarily appeared. As to subject matter jurisdiction, it cannot be credibly

denied that Justice Johnson had jurisdiction over the marital estate and over the money which Respondent acquired from his grandfather's trust following the parties' move to England. There is also no viable claim that the UK Judgment of Divorce was obtained by fraud. Further, there is no other final and conclusive judgment with which the UK Judgment of Divorce conflicts, and there was no agreement between the parties to settle the divorce otherwise than in the UK Court. Finally, given the fact that Petitioner was living in England, retained English attorneys, had the financial means to travel extensively for pleasure and business, and participated in every phase of the UK proceedings, it cannot be credibly argued that the UK Court was a seriously inconvenient forum for her.

All of the requirements of Sections 1 and 2 of the UFMJRA have been met, and none of the exceptions of Section 4 apply to the Judgment of Divorce. Therefore, the UK Judgment of Divorce is conclusive between the parties pursuant to Section 3 of the UFMJRA. If Respondent was the party seeking a second bite at the apple to reduce the amount of his separate assets awarded to Petitioner, he would have no basis to do so. Likewise, Petitioner should not be allowed a second effort to improve her position through duplicative proceedings.

CONCLUSION

It is evident that the principles of comity and *res judicata* were not used by the Michigan appellate courts as "rubber stamps" as Petitioner alleges, but were applied only after sufficient review to support a finding that the Petitioner's right to due process of law was not violated in the UK proceedings. Likewise, the UK Judgment of Divorce is equally qualified for recognition pursuant to the UFMJRA. The Petition for Writ of Certiorari to the United States Supreme Court should be denied.

Respectfully submitted,

HANLEY M. GURWIN
Counsel of Record
AMY A. STAWSKI
CHARLES G. GOEDERT
DICKINSON WRIGHT PLLC
Attorneys for Respondent
525 North Woodward Avenue
Suite 2000
Bloomfield Hills, MI 48304
(248) 433-7200